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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

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ELPIDIO DELGADO, JR.,

Plaintiff,

*versus*

BUREAU OF PRISONS, *et al.*

Defendants.

§§§§§  
CIVIL ACTION NO. 1:05-CV-401

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Elpidio Delgado, Jr., an inmate confined at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, brought this lawsuit against the Bureau of Prisons, Kathleen Hawk-Sawyer, and Marvin Morrison.

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed as frivolous and for failing to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes Plaintiff's objections are without merit.

Plaintiff complains that a posted memorandum forces inmates to relinquish their copies of their sentencing and judgment information. Plaintiff objects to the report stating that his pre-sentence report must be disclosed to him under *United States Dep't of Justice v. Julian*, 486 U.S. 1 (1988). However, this case is distinguishable from *Julian* because the question here is not whether the pre-sentence report must be disclosed but whether the pre-sentence report, once

disclosed, may be maintained in the prisoner's cell. An inmate who is afforded an opportunity to access and review his pre-sentence report is not entitled under the Freedom of Information Act ("FOIA") to possess a copy of his pre-sentence report if he is provided reasonable opportunities to access and review the pre-sentence report. *See Martinez v. Bureau of Prisons*, 444 F.3d 620, 625 (D.C. Cir. 2006). Plaintiff does not assert that he has not been afforded an opportunity to access and review his pre-sentence report, only that he is not allowed to maintain a copy in his cell. Therefore, plaintiff's objections are without merit.

**O R D E R**

Accordingly, Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 29th day of August, 2007.



MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE